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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,060	07/22/2003	Bryan B. Sauer	CL1833 US NA	8260
23906	7590	03/24/2005	EXAMINER	
E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1128 4417 LANCASTER PIKE WILMINGTON, DE 19805			GRAY, JILL M	
			ART UNIT	PAPER NUMBER
			1774	
DATE MAILED: 03/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/625,060

Applicant(s)

SAUER ET AL.

Examiner

Jill M. Gray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 14-43, 48 and 49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 44-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/27/04; 3/4/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group I in the reply filed on February 14, 2005 is acknowledged. The traversal is on the ground(s) that Groups I and IV have claims 43-47 in common. This is not found persuasive because the fiber of Group I is structurally distinct from the sheath/core fiber of Group IV. Also, claims 14 and 15 have been held non-elected based upon applicants' election of a fiber.

The requirement is still deemed proper and is therefore made FINAL.

### ***Specification***


The use of trademarks such as "TERETHANE" has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 11-13, 44 and 47 are rejected under 35 U.S.C. 102(e) as being anticipated by PCT Publication WO 03/008680 A1 (Sen).



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Sen teaches a fiber comprising a segmented thermoplastic elastomeric polymer and an uncrosslinked olefinic thermoplastic elastomeric polymer, said olefinic thermoplastic elastomeric polymer being an ethylene copolymer such as ethylene/1-octane copolymer, per claims 1, 11 and 13. In addition, Sen teaches that the copolymer is present in an amount within applicants' range as required by claim 12. See Example 2A. Also, Sen teaches that the thermoplastic elastomeric polymer can be of the type contemplated by applicants in claims 2-3, such as a poly(ether amide) or poly(ether ester). See page 7, lines 3-14. Sen also teaches the formation of fabrics and that a surfactant can be included as required by claims 44 and 47. See page 8, line 2 and page 19, line 1.

Therefore, the prior art teachings of Sen anticipate the invention as claimed in present claims 1-3, 11-13, 44 and 47.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over PCT Publication WO 03/008680 A1 (Sen), as applied above to claims 1-3, 11-13, 44 and 47, in view of Bonte et al, 6,380,290 B1 (Bonte).

Sen is as set forth above but does not teach the specific poly(ether ester). Bonte teaches segmented polyetheresters comprising polybutylene terephthalate and

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polytetramethylene oxide, per claim 5. See Experiment 1. It would have been obvious to use a poly(ether ester) of the type contemplated by applicants and as taught by Bonte with the reasonable expectation of obtaining a composition having improved thermooxidative stability. As to the amounts of claim 5, it is the examiner's position that since poly(ether esters) comprising polybutylene terephthalate and polytetramethylene oxide were known in the art, it was within the expected skills of one having ordinary skill in the art to arrive at the optimum proportion of those ingredients. As to claim 6, tetrahydrofuran is a known component in the polymerization of polymeric materials. It would have been obvious to incorporate this component in the polymer of Sen with the reasonable expectation of success of obtaining the efficacious properties associated therewith. Therefore, the teachings of Bonte would have rendered obvious the invention as claimed in present claims 4-6.

Claims 7-10 and 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over PCT Publication WO 03/008680 A1 (Sen), as applied above to claims 1-3, 11-13, 44 and 47, in view of PCT Publication WO 93/15251 (Gessner).

Sen is as set forth above but does not teach the specific olefins of claims 7-9. Gessner teaches the formation of fabrics, garments and hygiene articles (claims 44-46) comprising filaments formed from thermoplastic elastomers such as propylene based polymers of the type contemplated by applicants in claims 7-10. See page 10. In addition, Gessner teaches that his articles have improved elastic recovery properties. It would have been obvious to modify the teachings of Sen by substituting his olefinic thermoplastic elastomer with the olefinic thermoplastic elastomer taught by Gessner

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with the reasonable expectation of success of obtaining articles having improved elastic recovery.

Therefore, the combined teachings of Sen and Gessner would have rendered obvious the invention as claimed in present claims 7-10 and 44-46.

No claims are allowed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill M. Gray whose telephone number is 571-272-1524. The examiner can normally be reached on M-F 10:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jill M. Gray

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